



February 25, 2005

SENATE JOINT RESOLUTION No. 1

DIGEST OF SJ 1 (Updated February 23, 2005 4:39 pm - DI 106)

Citations Affected: Article 7 of the Constitution of the State of Indiana.

Synopsis: Selection of justices and appellate court judges. Renames the judicial nominating commission as the commission on judicial nominations and qualifications. Provides that one commission member will be selected by attorneys licensed in Indiana, one commission member will be appointed by the speaker of the house of representatives, and one commission member will be appointed by the president pro tem. Requires at least one commission member appointed by the governor to be an attorney. Provides for the governor to fill a vacancy on the supreme court or the court of appeals from nominees recommended by the commission on judicial nominations and qualifications, subject to confirmation by the senate. Provides that a justice of the supreme court and a judge of the court of appeals serves until July 1 of the tenth year after the justice's or judge's appointment is confirmed by the senate or the justice's or judge's retention in office is confirmed by the senate. Provides that if a justice or judge wants to serve a new term, the justice or judge must apply to the senate for retention. Specifies that a judge or justice will be retained, unless: (1) the judge or justice does not apply to the senate for retention; and (2) at least 60% of the members of the senate vote against retention. Clarifies impeachment proceedings for a justice or judge. Provides a transition for justices and judges serving at the time of the adoption of these amendments to the Constitution.

Effective: This proposed amendment must be agreed to by two consecutive general assemblies and ratified by a majority of the state's voters voting on the question to be effective.

Young R Michael

January 11, 2005, read first time and referred to Committee on Judiciary.
February 24, 2005, amended, reported favorably — Do Pass.

SJ 1 — SJ 9610/DI 75+



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February 25, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular General Assembly.

SENATE JOINT RESOLUTION No. 1

A JOINT RESOLUTION proposing an amendment to Article 7 of the Constitution of the State of Indiana concerning the judiciary.

Be it resolved by the General Assembly of the State of Indiana:

1 SECTION 1. The following amendment to the Constitution of the
2 State of Indiana is proposed and agreed to by this, the One Hundred
3 Fourteenth General Assembly of the State of Indiana, and is referred to
4 the next General Assembly for reconsideration and agreement.

5 SECTION 2. ARTICLE 7, SECTION 3 OF THE CONSTITUTION
6 OF THE STATE OF INDIANA IS AMENDED TO READ AS
7 FOLLOWS: Section 3. ~~Chief Justice.~~ **(a) The Commission on Judicial**
8 **Nominations and Qualifications shall select** the Chief Justice of the
9 State ~~shall be selected by the judicial nominating commission~~ from the
10 members of the Supreme Court. ~~and he shall retain~~

11 **(b) The Chief Justice may hold** that office for a period of five **(5)**
12 years, subject to reappointment in the same manner. ~~except that a~~
13 ~~member of the Court~~ **The Chief Justice** may resign the office of Chief
14 Justice without resigning from the Court.

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(c) During a vacancy in the office of Chief Justice caused by absence, illness, incapacity, or resignation all powers and duties of ~~that~~ **the office shall** devolve upon the member of the Supreme Court who is senior in length of service and if equal in length of service the determination shall be by lot until such time as the cause of the vacancy is terminated or the vacancy is filled.

(d) The Chief Justice ~~of the State~~ shall appoint such persons as the General Assembly by law may provide for the administration of ~~his~~ **the Chief Justice's** office.

(e) The Chief Justice shall have prepared and submit to the General Assembly regular reports on the condition of the courts and such other reports as may be requested **by the General Assembly.**

SECTION 3. ARTICLE 7, SECTION 9 OF THE CONSTITUTION OF THE STATE OF INDIANA IS AMENDED TO READ AS FOLLOWS: Section 9. Judicial Nominating Commission: (a) There shall be ~~one judicial nominating commission for the Supreme Court and Court of Appeals. This commission shall, in addition, be the a~~ **Commission on Judicial Nominations and Qualifications. for the Supreme Court and Court of Appeals.**

(b) The judicial nominating Commission ~~shall consist~~ **consists of the following** seven (7) members: ~~a majority of whom shall form a quorum; one of whom shall be~~

(1) The Chief Justice of the State or a Justice of the Supreme Court ~~whom he may designate; designated by the Chief Justice,~~ who shall act as ~~chairman. Those~~ **the Commission's chair.**

(2) **One individual** admitted to the practice of law ~~shall elect three of their number to serve as members of said commission. All elections shall be in such manner as the General Assembly may provide. in Indiana elected by those admitted to the practice of law in Indiana.~~

(3) **Three (3) citizens of Indiana appointed by the Governor.** ~~shall appoint to the commission three citizens; At least one of the citizens appointed by the Governor shall not be~~ admitted to the practice of law. The terms of office and compensation for members of a judicial nominating commission shall be fixed by ~~the General Assembly. No~~

(4) **One citizen of Indiana appointed by the President Pro Tempore of the Senate.**

(5) **One citizen of Indiana appointed by the Speaker of the House of Representatives.**

(c) A member of a ~~judicial nominating the~~ Commission other than the Chief Justice or ~~his~~ **the Chief Justice's** designee ~~shall may not~~

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1 hold any other salaried public office. ~~No A Commission member shall~~
 2 **may not** hold an office in a political party or organization. ~~No A~~
 3 **Commission member of the judicial nominating commission shall be**
 4 **is not** eligible for appointment to a judicial office ~~so long as he while~~
 5 **the individual** is a member of the Commission and for a period of
 6 three (3) years ~~thereafter, after the individual leaves the Commission.~~

7 (d) The General Assembly shall provide by law for the
 8 following:

9 (1) The term of office of Commission members.

10 (2) The compensation of Commission members.

11 (3) The manner of election of the elected Commission
 12 member.

13 (e) Four (4) Commission members constitute a quorum of the
 14 Commission.

15 SECTION 4. ARTICLE 7, SECTION 10 OF THE CONSTITUTION
 16 OF THE STATE OF INDIANA IS AMENDED TO READ AS
 17 FOLLOWS: Section 10. ~~Selection of Justices of the Supreme Court and~~
 18 ~~Judges of the Court of Appeals.~~ (a) **The Governor shall fill** a vacancy
 19 in a judicial office in the Supreme Court or Court of Appeals, ~~shall be~~
 20 ~~filled by the Governor;~~ without regard to political affiliation, by
 21 **appointing an individual** from a list of three (3) nominees ~~presented~~
 22 ~~to him recommended~~ by the judicial nominating Commission ~~if the~~
 23 ~~Governor shall fail to make an appointment from the list within sixty~~
 24 ~~days from the day it is presented to him; the appointment shall be made~~
 25 ~~by the Chief Justice or the acting Chief Justice from the same list. on~~
 26 **Judicial Nominations and Qualifications.**

27 (b) To be eligible for nomination as a Justice of the Supreme Court
 28 or Judge of the Court of Appeals, a person must be:

29 (1) domiciled within the geographic district;

30 (2) a citizen of the United States; **and**

31 (3) admitted to the practice of law in the courts of ~~the State~~
 32 **Indiana** for a period of not less than ten (10) years or must have
 33 served as a judge of a circuit, superior, or criminal court of ~~the~~
 34 ~~State of Indiana~~ for a period of not less than five (5) years.

35 (c) **Before an individual appointed as a Justice or Judge under**
 36 **this section may take office, the individual's appointment must be**
 37 **confirmed by the Senate by the affirmative vote of a majority of**
 38 **the members elected to the Senate under rules adopted by the**
 39 **Senate. The Governor may call the General Assembly into a special**
 40 **session to confirm an appointment to a judicial office under this**
 41 **section.**

42 (d) If the Governor fails to make an appointment not later than

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sixty (60) days after the Commission makes a recommendation to fill the vacancy, the Senate may confirm any of the nominees recommended by the Commission to the Governor.

(e) If the Senate fails to confirm a nominee not later than the sine die adjournment of the session of the General Assembly that occurs immediately after the names of nominees are submitted to the Governor:

(1) a nominee may not take the judicial office; and

(2) the office shall be filled as a vacancy by another individual as provided in this section.

SECTION 5. ARTICLE 7 OF THE CONSTITUTION OF THE STATE OF INDIANA IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS: Section 10.5. (a) A Justice of the Supreme Court or Judge of the Court of Appeals may serve until July 1 of the tenth year after the Justice's or Judge's:

(1) appointment is confirmed under section 10 of this article; or

(2) retention is confirmed under this section.

(b) If a Justice or Judge wishes to serve an additional term, the Justice or Judge must apply to the Senate for retention as provided by law.

(c) A Justice or Judge shall be retained in office unless at least sixty percent of the members elected to the Senate vote not to retain the Judge or Justice in office under rules adopted by the Senate.

(d) If a Judge or Justice fails to apply to the Senate for retention as provided by law, or if at least sixty percent of the members of the Senate vote against the retention of the Justice or Judge in office:

(1) the term of the Judge or Justice expires as provided in subsection (a);

(2) the Judge or Justice may not continue in office; and

(3) the office shall be filled as a vacancy by another individual as provided in section 10 of this article.

SECTION 6. ARTICLE 7, SECTION 11 OF THE CONSTITUTION OF THE STATE OF INDIANA IS AMENDED TO READ AS FOLLOWS: Section 11. Tenure of Justices of Supreme Court and Judges of the Court of Appeals: A Justice of the Supreme Court or Judge of the Court of Appeals shall serve until the next general election following the expiration of two years from the date of appointment; and subject to approval or rejection by the electorate; shall continue to serve for terms of ten years; so long as he retains his office. In the case

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of a justice of the Supreme Court, the electorate of the entire state shall vote on the question of approval or rejection. In the case of judges of the Court of Appeals the electorate of the geographic district in which he serves shall vote on the question of approval or rejection. Every ~~such~~ **(a) A Justice or Judge may be removed from office under this section, Article 6, Section 7, or Article 6, Section 8.**

(b) A Justice and or Judge shall retire at the age specified by statute in effect at the commencement of his the Justice's or Judge's current term.

~~Every such~~ **(c) A Justice or Judge is disqualified from acting as a judicial officer, without loss of salary, while there is pending:**

- (1) an indictment or information charging him the Justice or Judge in any court in the United States with a crime punishable as a felony under the laws of Indiana or the United States; or**
- (2) a recommendation to the Supreme Court by the Commission on Judicial Nominations and Qualifications for his the Justice's or Judge's removal or retirement.**

(d) On recommendation of the Commission on Judicial Nominations and Qualifications or on its own motion, the Supreme Court may suspend such a Justice or Judge from office without salary when in any court in the United States he the Justice or Judge:

- (1) pleads guilty or to;**
- (2) pleads no contest to; or**
- (3) is found guilty of;**

a crime punishable as a felony under the laws of Indiana or the United States, or of any other crime that involves moral turpitude under that law. If his the Justice's or Judge's conviction is reversed, the suspension terminates, and he the Justice or Judge shall be paid his the Justice's or Judge's salary for the period of suspension. If he the Justice or Judge is suspended and his the conviction becomes final, the Supreme Court shall remove him the Justice or Judge from office.

(e) On recommendation of the Commission on Judicial Nominations and Qualifications the Supreme Court may:

- (1) retire such a Justice or Judge for disability that seriously interferes with the performance of his judicial duties and is or is likely to become permanent; and**
- (2) censure or remove such the Justice or Judge for action occurring not more than six (6) years prior to before the commencement of his the Justice's or Judge's current term, when such action constitutes:**
 - (A) willful misconduct in office;**
 - (B) willful and persistent failure to perform his judicial duties;**



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(C) habitual intemperance; or

(D) conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(f) A Justice or Judge ~~so~~ retired by the Supreme Court shall be considered to have retired voluntarily. A Justice or Judge ~~so~~ removed by the Supreme Court is ineligible for judicial office and pending further order of the Court ~~he~~ is suspended from practicing law in ~~this State~~. **Indiana.**

(g) Upon receipt by the Supreme Court of any such recommendation, the Court shall:

(1) hold a hearing, at which ~~such the~~ Justice or Judge is entitled to be present; and

(2) make ~~such any~~ determinations ~~as shall be required~~. **No the Court considers necessary.**

A Justice ~~shall may not~~ participate in the determination of ~~such a~~ hearing when it concerns ~~himself~~. **the Justice's own case.**

(h) The Supreme Court shall make rules implementing this section and provide for convening of hearings. Hearings and proceedings shall be public upon request of the Justice or Judge whom it concerns.

~~No such~~ (i) A Justice or Judge ~~shall, may not~~ during ~~his the~~ Justice's or Judge's term of office **do any of the following:**

(1) Engage in the practice of law.

(2) Run for elective office other than a judicial office.

(3) Directly or indirectly make any contribution to, or hold any office in, a political party or organization. ~~or~~

(4) Take part in any political campaign **other than a campaign for election as a Judge of the Court of Appeals.**

SECTION 7. THE CONSTITUTION OF THE STATE OF INDIANA IS AMENDED BY ADDING THE FOLLOWING SCHEDULE:

SCHEDULE

An individual who serves as a Justice of the Indiana Supreme Court or a Judge of the Indiana Court of Appeals on the date the amendments to Article 7 of the Constitution of the State of Indiana, as amended by this joint resolution, are approved by the voters of Indiana may continue in office until the date the Justice's or Judge's term would have expired under Article 7 of the Constitution of the State of Indiana before its amendment by this joint resolution.

Such a Justice or Judge may seek a new term of office before the Justice's or Judge's term expires, subject to confirmation by the Senate as if the Justice or Judge had been nominated to fill a

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1 vacancy as provided in Article 7, Section 10 of the Constitution of
2 the State of Indiana, as amended by this joint resolution. The
3 successors of such Justices of the Supreme Court and Judges of the
4 Court of Appeals shall be chosen as provided in Article 7 of the
5 Constitution of the State of Indiana, as amended by this joint
6 resolution.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Engrossed Senate Joint Resolution No. 1, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said joint resolution be AMENDED as follows:

Page 2, line 26, delete "Three (3) individuals" and insert "**One individual**".

Page 2, line 32, delete "The" and insert "**At least one of the**".

Page 2, line 33, delete "may" and insert "**shall**".

Page 2, line 33, strike "not".

Page 2, between lines 36 and 37, begin a new line block indented and insert:

"(4) One citizen of Indiana appointed by the President Pro Tempore of the Senate.

(5) One citizen of Indiana appointed by the Speaker of the House of Representatives."

Page 3, line 8, delete "members." and insert "**member.**".

Page 4, line 9, delete "Section 10.5. (a) A Justice of" and insert "**Section 10.5. (a) A Justice of the Supreme Court or Judge of the Court of Appeals may serve until July 1 of the tenth year after the Justice's or Judge's:**

(1) appointment is confirmed under section 10 of this article;
or

(2) retention is confirmed under this section.

(b) If a Justice or Judge wishes to serve an additional term, the Justice or Judge must apply to the Senate for retention as provided by law.

(c) A Justice or Judge shall be retained in office unless at least sixty percent of the members elected to the Senate vote not to retain the Judge or Justice in office under rules adopted by the Senate.

(d) If a Judge or Justice fails to apply to the Senate for retention as provided by law, or if at least sixty percent of the members of the Senate vote against the retention of the Justice or Judge in office:

(1) the term of the Judge or Justice expires as provided in subsection (a);

(2) the Judge or Justice may not continue in office; and

(3) the office shall be filled as a vacancy by another individual as provided in section 10 of this article."

Page 4, delete lines 10 through 42.

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Page 5, delete lines 1 through 2.

Page 5, line 15, after "(a)" insert "**A Justice or Judge may be removed from office under this section, Article 6, Section 7, or Article 6, Section 8.**

(b)".

Page 5, line 18, delete "(b)" and insert "**(c)**".

Page 5, line 26, delete "(c)" and insert "**(d)**".

Page 5, line 40, delete "(d)" and insert "**(e)**".

Page 6, line 12, delete "(e)" and insert "**(f)**".

Page 6, line 17, delete "(f)" and insert "**(g)**".

Page 6, line 25, delete "(g)" and insert "**(h)**".

Page 6, line 28, delete "(h)" and insert "**(i)**".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SJR 1 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 1.

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